

2:17-cv-01628-RFB-EJY

## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

SHANNON CARTER, )  
 ) Case No. 2:17-cv-01628-RFB-EJY  
 Plaintiff, )  
 ) Las Vegas, Nevada  
 vs. ) Tuesday, September 28, 2021  
 ) 11:05 a.m.  
 S. BEAN, BITAR, and J. )  
 NASH, et al., ) MOTION HEARING  
 )  
 Defendants. ) **C E R T I F I E D C O P Y**

## REPORTER'S TRANSCRIPT OF PROCEEDINGS

THE HONORABLE RICHARD F. BOULWARE, II,  
 UNITED STATES DISTRICT JUDGE

## APPEARANCES:

For the Plaintiff: **LUKE ANDREW BUSBY, ESQ.**  
 LUKE ANDREW BUSBY, LTD.  
 316 California Avenue  
 Reno, NV 89509  
 (775) 453-0112

For the Defendant: **AMY A. PORRAY, ESQ.**  
 OFFICE OF NEVADA ATTORNEY GENERAL  
 555 E. Washington Avenue, Suite 3900  
 Las Vegas, Nevada 89101  
 (702) 486-3216

COURT REPORTER: Patricia L. Ganci, RMR, CRR  
 United States District Court  
 333 Las Vegas Boulevard South, Room 1334  
 Las Vegas, Nevada 89101

Proceedings reported by machine shorthand, transcript produced  
 by computer-aided transcription.

2:17-cv-01628-RFB-EJY

1 LAS VEGAS, NEVADA; TUESDAY, SEPTEMBER 28, 2021; 11:05 A.M.

2 --oOo--

3 P R O C E E D I N G S

4 THE COURT: All right. I'm going to call this case.

5 This is the case of Carter versus Bean, et al., Case Number

6 2:17-cv-1628. Counsel, please announce their presence for the

7 record starting with plaintiff's counsel. Mr. Busby.

8 MR. BUSBY: Good morning, Your Honor. Luke Busby

9 appearing for Plaintiff Shannon Carter. And I'm joined by my

10 UNLV intern, who's helping me with the case.

11 THE COURT: Good morning to the both of you.

12 MS. PORRAY: Hi. Good morning, Your Honor. Amy

13 Porray, Deputy Attorney General, Attorney General's Office, on

14 behalf of defendants.

15 THE COURT: Good morning.

16 So we have this motion for consideration. Let me --

17 let me make a few things very clear. In looking at the motion

18 papers, it seemed to me it wasn't clear to me. One of the

19 things I want to make clear is that -- although it's implied in

20 the facts, I didn't make it explicit -- I do find in this case

21 based upon the series of grievances that were submitted that

22 administrative remedies were unavailable to Mr. Carter because

23 of the fact that he had clearly indicated his need for medical

24 care and the fact that he was in pain and the fact that he was

25 not getting that treatment. As the grievance indicate -- the

2:17-cv-01628-RFB-EJY

1 pattern of grievances indicate that he has repeatedly sought to  
2 obtain treatment, did not -- did not receive treatment, and that  
3 there are sufficient allegations that, in fact, he was  
4 retaliated against for seeking the treatment, which would  
5 further support a finding that administrative remedies were  
6 unavailable to Mr. Carter.

7 I think also ultimately the fact that the Court had to  
8 order treatment in this case is an additional factor, but  
9 that -- that -- that, of course, occurred after -- afterwards.  
10 But I do find that administrative remedies were unavailable to  
11 Mr. Carter.

12 In addition to finding that, to the extent that there  
13 was a need for exhaustion, he exhausted, I find both  
14 alternatively because in this case it's very clear to the Court  
15 and the facts establish that these remedies were not available  
16 to him despite his repeated efforts to obtain treatment.

17 Now, Ms. Porray, I know that you have raised various  
18 issues in this case as relates to exhaustion, but I wanted to  
19 make that part clear because it does seem to me that there was  
20 some dispute by the parties about that particular issue. And I  
21 was not as explicit in my prior order, and I just wanted to make  
22 that an explicit finding in this case because of the facts and  
23 the record in this case.

24 So with that, Ms. Porray, do you have anything you wish  
25 to add to what you've already submitted in this case?

2:17-cv-01628-RFB-EJY

1 MS. PORRAY: No, Your Honor.

2 THE COURT: Okay. Mr. Busby, anything else beyond what  
3 you've already submitted in terms of your response?

4 MR. BUSBY: Nothing, Your Honor. Thank you.

5 THE COURT: Okay. Wow. That was quick and easy.

6 I am going to deny the motion for reconsideration. I  
7 don't find any legal basis for the Court to reconsider its prior  
8 ruling. I also wanted to take the opportunity, as I've  
9 indicated, to further clarify the Court's ruling in terms of  
10 finding that administrative remedies were also unavailable to  
11 Mr. Carter for the reasons I've identified today. And so I'm  
12 going to deny the motion for reconsideration at this time.

13 Is there anything else that we need to do today? I  
14 know that there is, I think, a pending appeal before the  
15 Circuit, but I'm not sure. It says so on the docket. I'm not  
16 sure where that stands. Ms. Porray, perhaps, you could tell us  
17 where that stands. And, perhaps, the Circuit was waiting for  
18 this ruling, which they typically would do if there was a motion  
19 for reconsideration.

20 MS. PORRAY: And that is where it's at right now. The  
21 Circuit was waiting for this ruling on the motion to then lift  
22 the stay.

23 THE COURT: Okay. Well, I will -- I'm not going to  
24 issue a separate written ruling. The transcript of the hearing  
25 will be the opinion and order of the Court. That will expedite

2:17-cv-01628-RFB-EJY

1 matters here. And then we'll see what happens in the context of  
2 the appeal and proceed from there.

3 MS. PORRAY: Thank you, Your Honor.

4 MR. BUSBY: Thank you, Your Honor.

5 THE COURT: All right. Anything else then? No?

6 MR. BUSBY: Nothing, Your Honor. Thank you.

7 THE COURT: All right. Well, thank you both -- all  
8 three of you, I should say. Everyone please be well and be  
9 safe. We'll be adjourned. Thank you.

10 MS. PORRAY: Thank you so much.

11 MR. BUSBY: See you, Judge.

12 MS. PORRAY: Bye-bye.

13 THE COURT: Bye.

14 (Whereupon the proceedings concluded at 11:09 a.m.)

15 --oOo--

16 COURT REPORTER'S CERTIFICATE

17

18 I, PATRICIA L. GANCI, Official Court Reporter, United  
19 States District Court, District of Nevada, Las Vegas, Nevada,  
20 certify that the foregoing is a correct transcript from the  
21 record of proceedings in the above-entitled matter.

22

23 Date: November 8, 2021.

24

/s/ Patricia L. Ganci

25

Patricia L. Ganci, RMR, CRR  
CCR #937